

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

VIRGIL RIVERS-BEY

§
§

CIVIL ACTION NO. 1:15-CV-270

WARDEN, USP BEAUMONT

§

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner, Virgil Rivers-Bey, a federal prisoner currently confined at USP Beaumont, Texas, proceeding *pro se* and *in forma pauperis*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends the petition be denied.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court finds the objections lacking in merit. To the extent petitioner now relies on *Alleyne v. United States*, – U.S. –, 133 S.Ct. 2151 (2013) and *Bailey v. United States*, – U.S. –, 116 S.Ct. 501 (1995), these claims lack merit. *Alleyne* does not apply retroactively to cases on collateral review and *Bailey*, decided in 1995, was available to petitioner during petitioner's trial, appeal or first § 2255 motion. *See In re Kemper*, 735 F.3d 211 (5th Cir. 2013); *see also Reyes-Requena v. United States*, 243 F.3d 893 (5th Cir. 2011).

ORDER

Accordingly, the objections of petitioner are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED this the **5** day of **January, 2016**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield
United States District Judge